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November 10, 2014

**VIA ECF**

Honorable Lorna G. Schofield  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: Cohen v. Aetna, No. 14-4697 (LGS)**

Dear Judge Schofield,

Pursuant to Paragraph 13(a) of the Case Management Plan and Scheduling Order, the parties submit this joint letter on the status of discovery.

**A. Rule 26 Initial Disclosures**

Paragraph 7 of the Case Management Plan and Scheduling Order required the parties to serve their Rule 26 Initial Disclosures by September 26, 2014.

Plaintiff served his Rule 26 Initial Disclosures on November 6, 2014. Defendant served its Rule 26 Initial Disclosures on September 25, 2014.

**B. Plaintiff's Discovery Requests**

Plaintiff has yet to serve Defendant with any written discovery in this matter.

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### **C. Defendant's Discovery Requests**

#### Defendant's Position

Defendant served its first set of discovery demands over two months ago, and despite repeated efforts to secure them, has yet to receive written responses to these requests. Accordingly, Defendant seeks a pre-motion conference pursuant to Section III.C.3 of Your Honor's Individual Rules.

Specifically, on September 10, 2014, Defendant served its first set of Interrogatories and Requests for the Production of Documents on the Plaintiff. On October 14, 2014, our office notified Mr. Santucci that we had yet to receive responses to our requests, and inquired as to when we should expect these responses. Having received no response, on October 24, 2014, we again contacted Mr. Santucci, at which time he indicated that he would serve written responses by October 31, 2014. Again having received no response, on November 4, 2014, we contacted Mr. Santucci to inquire as to when we should expect his client's responses to Defendants' pending discovery requests.

On November 5, 2014, Mr. Santucci served a single-paged document captioned "Response to Defendant's Document Demand." The body of this single-paged document states: "Plaintiff, Barry Cohen, M.D., by and through his attorneys, Santucci Law Offices, provide the attached documents." Attached to this document were just 42 pages of documents.

On November 6, 2014, we informed Mr. Santucci that this response was facially deficient, and failed to satisfy the requirements of Rules 33 and 34, which respectively require his client to serve written responses to each interrogatory and request for the production of documents.

To date, Plaintiff has not served responses to Defendant's interrogatories or requests for the production of documents. As recounted above, we have repeatedly conferred in good faith with Mr. Santucci to resolve this dispute, but to no avail. Pursuant to Section III.C.3 of Your Honor's Individual Rules, we hereby request a pre-motion conference in order to either resolve this dispute or to otherwise seek leave to file an appropriate motion.

#### Plaintiff's Position

As the Court indicated at the initial conference on this matter that the issues presented did not necessarily fall within the purview of ERISA. However, Mr. Shah in his Rule 26 Initial Disclosures or non disclosure, provided no information or documents whatsoever and merely referred to production of the Administrative Record at a later date.

The issues in this matter are the in Network or out of Network status of the Plaintiff and the error of the Defendant in deducting moneys owed by an inactive entity, Island Medical Services, Inc. owned by a Mordecai Bluth, M.D. from present claims submitted to the Defendant by the Plaintiff.

The claims of the patients involved are not in issue but merely a byproduct of the issues of the status of the Plaintiff and deductions by the Defendant to cover another medical provider's debt.

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The medical claims are the basis for Mr. Shah's assertion of ERISA preemption.

Mr. Shah is laboring under the presumption that this matter is purely an ERISA matter and is churning the case in this fashion and demanding unnecessary and burdensome discovery.

Mr. Shah was requested to please amend his Rule 26 Initial Disclosure and include the documents in possession of his client regarding Dr. Cohen's in Network or out of Network status with Aetna and any documents indicating Dr. Cohen's responsibility for money owed to Aetna by Island Medical Services, Inc. and Mordecai Bluth, M.D.

Further, Mr. Shah was requested to provide all the documents indicating Aetna's agent, AfterMath Claim Science, Inc.'s deductions of money from Dr. Cohen's claims to satisfy Island Medical Services, Inc.'s debt.

Since neither is part of the Administrative Record these items were not forwarded to me.

I agree with Mr. Shah that a conference is needed to revisit the issue of removal, discovery and discuss settlement.

In my past numerous dealings with Aetna they have readily corrected administrative mistakes and made the party whole and perhaps a settlement conference should be ordered forthwith with the parties present.

As always, we appreciate Your Honor's attention to these matters.

Respectfully,

*/s/ Neil V. Shah*

*Counsel for the Defendant*

*/s/ Robert Santucci*

*Counsel for the Plaintiff*

Enclosure

cc: Robert A. Santucci, Esq. (via ECF)